

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEX COOPER,	§	
	§	No. 99, 2010
Appellant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
UNEMPLOYMENT INSURANCE	§	
APPEAL BOARD,	§	
	§	
Appellee Below,	§	C.A. No. 09A-06-005
Appellee.	§	

Submitted: July 9, 2010

Decided: September 13, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

**ORDER**

This 13<sup>th</sup> day of September 2010, upon consideration of the briefs on appeal and the records of the Superior Court and the Unemployment Insurance Appeal Board, it appears to the Court that:

(1) The *pro se* appellant, Alex Cooper, collected unemployment benefits from January through June 2008 (“the 2008 benefits”). By Department of Labor notice dated September 3, 2008 (“September 3 notice”), a claims deputy determined that Cooper was ineligible for the 2008 benefits and was required to repay them. The September 3 notice advised Cooper that he had ten days to file an appeal.

(2) Five months later, *i.e.* on February 13, 2009, Cooper appealed the September 3 notice. By notice dated February 17, 2009 (“February 17 notice”), the claims deputy determined that Cooper’s appeal was untimely filed and would not be considered.

(3) Cooper filed an appeal from the claims deputy’s February 17 notice. A hearing was held before an appeals referee. At the hearing, a representative from the Department of Labor testified that the September 3 notice was mailed to Cooper on September 3, 2008 at Cooper’s address of record. Cooper testified that he did not receive the September 3 notice and did not learn of the overpayment until sometime in December 2008 when he received a statement with a payment coupon. According to Cooper, when he received the statement and payment coupon in December 2008, he promptly submitted an appeal from the September 3 notice to the Department of Labor. Cooper surmised that his appeal submitted in December 2008 must have been misplaced by Department of Labor employees.

(4) By decision issued on March 12, 2009, the appeals referee affirmed the February 17 notice determining that Cooper’s appeal of the September 3 notice was untimely without exception. Cooper filed an appeal from the appeals referee’s decision with the Unemployment Insurance Appeals Board (UIAB). By decision dated May 21, 2009, the UIAB

affirmed the appeals referee's decision, concluding that "the claimant has been afforded notice and opportunity sufficient to meet the requirements of due process and, in the absence of departmental error or other severe circumstances, there is no justification to expand the jurisdictional limits for appeal."

(5) Cooper filed an appeal from the UIAB's decision with the Superior Court. In an opinion and order dated February 9, 2010, the Superior Court affirmed the UIAB's decision<sup>1</sup> and further concluded that there were no extenuating circumstances suggesting that Cooper's late appeal of the September 3 notice should be heard "in the interests of justice."<sup>2</sup> This appeal followed.

(6) The Superior Court's review of a decision of the UIAB is limited to a determination of whether there is substantial evidence in the record to support the UIAB's findings and whether such findings are free from legal error.<sup>3</sup> Upon an appeal from the Superior Court's affirmance of a decision of the UIAB, this Court's review is similarly limited.<sup>4</sup> Absent

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<sup>1</sup> *Cooper v. Unemployment Ins. Appeal Bd.*, 2010 WL 532453 (Del. Super.).

<sup>2</sup> *Id.* See *Funk v. Unemployment Ins. Appeal Bd.*, 591 A.2d 222, 225 (Del. 1991) (discussing UIAB's "wide discretion over the unemployment benefits appeal process").

<sup>3</sup> See *Straley v. Advance Staffing, Inc.*, 2009 WL 3451913 (Del. Supr.) (citing *Unemployment Ins. Appeal Bd. v. Duncan*, 337 A.2d 308, 308-09 (Del. 1975)).

<sup>4</sup> *Duncan*, 337 A.2d at 309.

abuse of discretion, the Superior Court and this Court must uphold a decision of the UIAB.<sup>5</sup>

(7) In this case, having carefully reviewed the record and the parties' positions on appeal, we conclude that the UIAB's decision is supported by the evidence and is free from legal error and abuse of discretion. As such, we conclude that the Superior Court's opinion and order of February 9, 2010 must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>5</sup> *Funk*, 591 A.2d at 225.